

Notice of Allowability

Application No.

09/823,910

Examiner

Peter J Vrettakos

Applicant(s)

BALBIERZ ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Amendment dated 4-13-04.
2. ☒ The allowed claim(s) is/are 1-9,11,18,19,23-25,29,31-37,39-44,47,48,53,57-62,67-75,77,82-84,89,92,93,95-99,105 and 106.
3. ☒ The drawings filed on 8-1-01 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 4-5-04
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____.
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

REASONS FOR ALLOWANCE

This case is a sister case to 09/823,903. The instant case includes method claims. The referred case includes analogous system/apparatus claims. The reasons for allowance in both cases involve the optical switching device permitting switching of the mode of an optical sensor between emitting and detecting.

Claims 10,12-17,20-22,26-28,30,38,45-46,49-52,54-56,63-66,76,78-81,85-88,90-91,94, and 100-104 are cancelled without prejudice.

The following is an examiner's statement of reasons for allowance: The Applicant has successfully argued that the coupling system in Benaron ('791) figure 9 does not include a switching device for switching the mode of the optical sensor (between emitting and detecting). The Office prior inaccurately stated that element 994 was a switch (or had switching abilities). Instead, the element merely serves as a coupler of light emitted from light sources 43 (1-3). Applicant's figure 4 element 29 discloses a switching device for switching the mode of the optical sensor (22m).

Pending independent claims are 1 and 57. All of the independent claims include language toward a method of using an optical sensor operatively connected to function as an emitter and a detector and an *optical switching device to switch the mode of the sensor*. The prior art neither teaches nor suggests this combination in method that involves an RF tissue biopsy and treatment apparatus. Therefore, the case is in

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condition for allowance (claims 1-9, 11, 18-19, 23-25, 29, 31-37, 39-44, 47-48, 53, 57-62, 67-75, 77, 82-84, 89, 92-93, 95-99, and 105-106.)

The Drawings filed 8-1-2001 are accepted.

The IDS submitted 4-5-04 has been considered.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

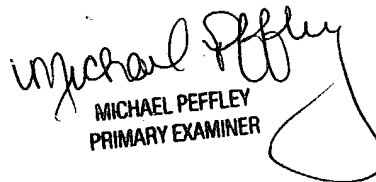
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter J Vrettakos whose telephone number is 703 605 0215. The examiner can normally be reached on M-F 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C Dvorak can be reached on 703 308 0994. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pete Vrettakos
April 28, 2004



MICHAEL PEFFLEY
PRIMARY EXAMINER